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What are the Pieces Worth? Valuing Intellectual Property

What Are the Pieces Worth? Valuing the Intellectual Property of a Failed Dot-com

When a company fails, the questions arise: Where did the money go, and what remains of the company that can be leveraged to repay creditors? Typically, when dealing with a failed Internet company, especially a pure-play, the money was spent on marketing first and product development second. Everything else was leased, and few tangible assets remain.

As a going concern, the intangible assets such as an assembled high-tech workforce, customer relationships, partnership agreements and the general reputation of the company may have held significant value. However, when picking over the bones of a failed dot-com venture, intellectual property (IP) may be the only asset left to liquidate. These may be worthless or they may possess significant value.

The primary IP assets of a dot-com are its trademarks, domain names and product software; i.e., website software, data and content, and storage and retrieval systems. Some companies may also have business method patents and copyright-protected content. The great sums spent on marketing are likely to enhance the value of trademarks and domain names, and sums spent on product development are likely to enhance the value of the product software.

Is there any value left in the IP? It depends on the specific circumstances of the business failure and the types of IP assets developed. If the failure resulted from a bad business concept, then the IP may well be worthless. However, aspects of the website infrastructure might be of use to companies with similar processing needs and a stronger business concept. For example, failed online grocer Webvan is taking bids for its technology platform, which is capable of a range of functions from a completely integrated e-commerce platform to supporting warehouse management and delivery operations.

Alternatively, the IP may be the embodiment of a sound business concept thwarted by limited capital or poor management. Such IP may still have value to a company with the resources to commercialize it further. Under its Chapter 11 bankruptcy, CyberCash sold its payment gateway to VeriSign and its IC Verify software to First Data Merchant Services for a combined bid of \$24 million.

Another company, E-Stamp, terminated its core business after incurring limited market acceptance of electronic stamps and continuing patent infringement claims by Pitney Bowes. Knowing that the patent portfolio would immediately come under infringement claims if purchased and exploited, one would assume it was of no value. In fact, the company sold its 31 patents, the E-Stamp trademark and its domain name for \$7.5 million to Stamps.com, who was fighting similar infringement claims from Pitney Bowes anyway.

Some of these companies have content that is valuable, such as APBnews.com, which hosts content on police investigations and the criminal justice system. Unable to find financing to restructure under Chapter 11, APB sold its website content and domain names to SafetyTips.com for \$575,000.

The domain names themselves may have value alone or as links to the purchaser of other assets. Jarvis Auction is currently conducting bankruptcy auctions for a number of domain names such as GlobalMedia.com, TotalPlayer.com and Scrooged.com. Visit E-stamp.com and you will be redirected to Stamps.com. Visit Trade.com and you will see a letter explaining the transfer of customer accounts elsewhere and a link to the new brokerage house. Often, domain names will be packaged with counterpart trademarks for sale as a portfolio.

To determine the value of IP assets such as these, the owner may need to first identify a potential buyer in order to understand how the IP may be utilized and then what value may still exist. If the IP portfolio is to be unbundled and sold for its highest and best uses, then several buyers may be identified. An analysis can then be performed to determine a recoverable value for the IP assets.

To discuss valuation issues involving intellectual property, contact Gary Abdalla, HSSK Intellectual Property Director, gabdalla@hsskgroup.com.

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